84-1382

Office-Supreme Court, U.S.
FILED
MAR 26 1985
ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

IN THE MATTER OF THE ESTATE OF EDWARD GORDON STERN, DECEASED, H.T. MULLEN, JR., ADMINISTRATOR OF THE ESTATE OF EDWARD GORDON STERN,

Appellant,

v.

CEILA STERN, ROBERT WEISS, MELVENA W. TRAVALIA, AUGUST WEISS, EMMA W. JOHNSON, AGNES WEISS TEULON, WILLIAM WEISS, ADELE S. STEIN, A. EDWIN STERN, JR., JENNIE W. MILLSTEIN, HARRY S. WENDER, FLORENCE MARGARET W. LEHN, SHIRLEY JOAN W. UKRAINETZ, GEORGINA L. GEPPERT, EVELYN L. BAERWALDT, HELEN L. McGOVERN, GORDON LISSEL, JEAN L. GESCHWANDTNER, THERESA L. SEIDENS, JAMES LISSEL, and ALL KNOWN HEIRS OF EDWARD GORDON STERN,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

MOTION OF APPELLEES TO DISMISS

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1984

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MOTION

Pursuant to the provisions of Rule 16.1 of the Rules of the Supreme Court of the United States, appellees move that the Court dismiss this appeal on the ground that it does not present a substantial federal question.

I.

STATEMENT OF RELEVANT FACTS

Decedent Edward Gordon Stern was a North Carolina citizen and resident, who died intestate in North Carolina in 1980. He was survived by aunts and uncles.

The decedent was born in Saskatchewan, Canada, in 1927. His birth certificate did not list the

names of either parent. However, he lived with Hilda Weiss, his mother, and Edward D. Stern, his putative father. Ms. Weiss and Mr. Stern never married. Although the decedent's last name was Weiss, his school records and medical records listed his last name as Stern. Ms. Weiss died when the decedent was six (6) years old. Thereafter, he lived with his putative father until he joined the Army, at age 15.

Later in life, the decedent's putative father executed a Will, bequeathing the "residue of my estate to my son, Edward Gordon Stern ...." Thereafter, at his putative father's request, the decedent changed his last name from Weiss to Stern, in Canada.

He also changed his last name to Stern in the United States.

At no time was Edward D. Stern ever adjudged to be the decedent's father as required by N.C.G.S. 29-19(b)(1). At no time did Edward D. Stern ever acknowledge his paternity during his and the child's lifetime in the manner required by N.C.G.S. 29-19(b)(2).

The North Carolina Court of Appeals held that N.C.G.S. 29-19(b) and (c) govern the rights of a putative father and the paternal heirs to inherit by, through and from an intestate illegitimate; that N.C.G.S. 29-19(c) clearly and unambiguously provides that paternity must be established by one of the methods prescribed by N.C.G.S.

29-19(b) for the putative father and his kindred to inherit from an illegitimate child; that the record is devoid of evidence that the putative father met the requirements of N.C.G.S. 29-19(b); that N.C.G.S. 29-19 does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and that the heirs of the putative father did not have any rights to the decedent's estate. In re Estate of Stern v. Stern, 66 N.C. App. 507, 311 S. E. 2d 909 (1984).

The Supreme Court of North Carolina affirmed, in a per curiam opinion. In re Estate of Stern v. Stern, 322 S. E. 2d 771 (N.C. 1984).

II.

ARGUMENT IN FAVOR OF APPELLEES' MOTIONTO DISMISS: THE APPEAL FROM THE STATE COURT DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

The appellants contend that N.C.G.S. 29-19(b) as applied to this case violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that it does not further any permissible state interests. (see Appellants' Jurisdictional Statement, page 4.) The appellants seem to confuse their own idea of fairness with the requirements of the Equal Protection Clause. As Justice Powell wrote in Lalli v. Lalli: "Our inquiry under the Equal Protection

Clause does not focus on the abstract 'fairness' of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the rationality contemplated by the Fourteenth Amendment." Lalli v. Lalli, 439 U.S. 259, 58 L. Ed. 2d 503, 99 S.Ct. 518 (1978).

The issue to be decided is whether N.C.G.S. 29-19(b), as applied to this case, is substantially related to permissible state interests. The North Carolina Supreme Court has previously held that N.C.G.S. 29-19 does not violate the Equal Protection Clause of the United States Constitution. Mitchell v. Freuler, 297 N.C. 206, 254

S.E. 2d 762 (1979). That Court identified the State's interest as follows:

> "(1) to mitigate the hardships created by North Carolina's former law which permitted illegitimates to inherit only from the mother and from each other;
>
> (2) to equalize in so far as practical the inheritance rights of legitimate and illegitimate children; and
>
> (3) at the same time, to safeguard the just and orderly disposition of a decedent's property and the dependability of titles passing under intestate laws." Id. at 216.

Although the Mitchell case is

distinguishable from this case in that it involves the inheritance rights of an illegitimate rather than the inheritance rights of the putative father of an illegitimate, the statute involved is the same. The state interests involved are the same, too. N.C.G.S. 29-19(b) and (c) require that for the putative father to inherit from the intestate decedent's estate, the putative father must take the necessary steps to preserve his rights. He must either acknowledge his paternity during his lifetime and the child's lifetime in the manner prescribed in the statute or be judicially adjudged to be the decedent's father. This statute imposes a much lighter burden on the

putative father wishing to inherit than it imposes on the illegitimate child who wishes to inherit. Unlike the illegitimate child, who has no power to establish his right to inherit from his father, the putative father need only acknowledge his paternity in the manner prescribed by the statute in order to inherit.

Clearly, the requirements of N.C.G.S. 29-19(b) and (c) are substantially related to the state interests this statute is intended to promote. First, the statutory requirements create the manner in which the putative father can inherit from his intestate illegitimate child. Second, the statute equalizes in so far

as practical the inheritance rights of the putative father with the mother of the illegitimate child by creating a simple, reliable way in which to prove his paternity. Finally, the statute safeguards the just and orderly disposition of an intestate illegitimate's property and the dependability of titles passing under intestate laws by requiring either a court to adjudge the putative father to be the father of the illegitimate child or requiring the putative father, during his and the child's lifetime, to acknowledge paternity in a written instrument before a certifying officer and file the instrument in the Office of the Clerk of Court where either he

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or the child resides.

Interestingly, the appellants' argument fails to address the issue of whether the statute, or its application, is substantially related to the above-stated state interests.

For the foregoing reasons, the appellees' motion to dismiss the appeal should be granted.

III.

CONCLUSION

The appellees move that this appeal be dismissed.

Respectfully submitted,

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Counsel of Record for Appellees

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing and attached MOTION OF APPELLEES TO DISMISS have been duly served upon each of the parties required to be served herein as follows:

On CELIA STERN, ADELE S. STEIN, A. EDWIN STERN, JR., JENNIE W. MILLSTEIN, and HARRY S. WENDER, the appellants herein, by mailing the same in a United States mailbox, with first class postage prepaid, to C. Glenn Austin of Jennette, Morrison, Austin & Halstead, counsel of record for said appellants at his

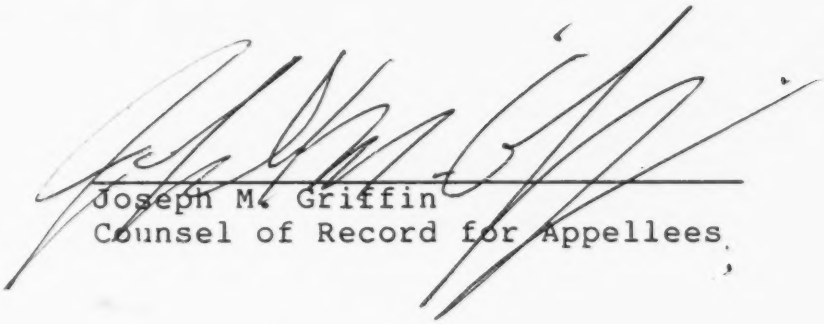
office, at PO Box 384, Elizabeth City, North Carolina 27909.

On HERBERT T. MULLEN, JR., Administrator of the Estate of Edward Gordon Stern, herein, by mailing the same in a United States mailbox, with first class postage prepaid, to his office, at PO Box 304, Elizabeth City, North Carolina 27909.

On the HONORABLE LACY THORNBURG, Attorney General of North Carolina, herein, by mailing the same in a United States mailbox, with first class postage prepaid, to her office, at PO Box 629, Raleigh,

North Carolina 27602.

All parties required to be served have been served.



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